



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/755,779

01/12/2004

Barnet Liberman

4019-42

1971

27799

7590

04/17/2007

COHEN, PONTANI, LIEBERMAN & PAVANE  
551 FIFTH AVENUE  
SUITE 1210  
NEW YORK, NY 10176

EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

3 MONTHS

04/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

8

<b>Office Action Summary</b>	<b>Application No.</b> 10/755,779	<b>Applicant(s)</b> LIBERMAN, BARNET	
	<b>Examiner</b> Viren Thakur	<b>Art Unit</b> 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 36-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. As a result of the amendment the objection to the drawings is withdrawn.
2. As a result of the amendment the objection to the specification is withdrawn.
3. As a result of the cancellation of claim 35, the objection to the claims has been withdrawn.
4. As a result of the cancellation of claims 11-35, the rejection of claims 11, 12, 14-20, 22-28 and 30-34 under 35 U.S.C. 102(b) as being anticipated by Liberman (US 20020106443) has been withdrawn.
5. As a result of the cancellation of claims 11-35, the rejection of claims 27-34 under 35 U.S.C. 102(b) as being anticipated by Liberman et al. (US 5807598) has been withdrawn.

### ***Claim Rejections - 35 USC § 103***

Art Unit: 1761

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 1, 6-10 and new claims 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106443) in view of Christopher (US 3411433).**

The rejection and references are taken as cited in the prior Office Action, mailed November 15, 2006.

Instant claim 36 is rejected for the reasons of record in the prior Office Action, mailed November 15, 2006.

Regarding instant claim 37, Liberman teaches wherein the presentation board is mesh, as discussed in the prior Office Action, mailed November 15, 2006.

- 9. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106443) in view of Christopher (US 3411433) as applied to claims 1, 6-10 and 36-37, above, and in further view of Liberman (US 5807598).**

Liberman and Christopher are taken as applied above.

Liberman is silent in teaching wherein the presentation board is made in the form and shape of a logo.

Liberman et al. '598 disclose that the mold for said fish meat may be in the shape of a fish fillet or in the shape of a steak or hamburger patty if the meat is beef (Column 3, Lines 43-48). Therefore, Liberman et al. '598 provide motivation to one having ordinary skill in the art that the mold can be shaped into any desirable figure. Providing the shape of the meat into the TRUFRESH® logo would not provide a patentable distinction between the current invention and the prior art.

- 10. Claims 1-4, 6-10 and new claims 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106443) in view of Mead (US 2507862) and Morrison (US 2807548).**

The rejection and references are taken as cited in the prior Office Action mailed, November 15, 2006.

Instant claim 36 is rejected for the reasons of record in the prior Office Action, mailed November 15, 2006.

Regarding instant claim 37, Liberman teaches wherein the presentation board is mesh, as discussed in the prior Office Action, mailed November 15, 2006.

- 11. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106443) in view of Mead (US 2507862) and Morrison (US 2807548), as applied to claims 1-4, 6-10 and 36-37, above, and in further view of Liberman (US 5807598).**

Liberman and Christopher are taken as applied above.

Liberman is silent in teaching wherein the presentation board is made in the form and shape of a logo.

Liberman et al. '598 disclose that the mold for said fish meat may be in the shape of a fish fillet or in the shape of a steak or hamburger patty if the meat is beef (Column 3, Lines 43-48). Therefore, Liberman et al. '598 provide motivation to one having ordinary skill in the art that the mold can be shaped into any desirable figure. Providing the shape of the meat into the TRUFRESH® logo would not provide a patentable distinction between the current invention and the prior art.

Art Unit: 1761

- 12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106443) in view of Mead (US 2507862) and Morrison (US 2807548) as applied to claims 1-4, 6-10 and 36-37 above, and in further view of Liberman et al. (US 5807598).**

Liberman in view of Mead and Morrison do not disclose wherein said fish is sliced salmon.

Liberman et al. disclose using trims of salmon to mold a meat product using a cooled brine freezing method.

Therefore, the teachings of Liberman et al. suggest to one having ordinary skill in the art that any type of fish, such as sliced salmon, can be placed in a container for freezing.

### ***Response to Arguments***

- 13. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).**

Applicant's arguments on page 10, stating that the foil primarily functions as a support for the meat product and will not facilitate or assist the heat transfer between the meat product and the cooled brine because the foil constitutes an extra medium through which the heat has to pass, has been fully considered but is not persuasive. The Examiner asserts that the instant claims also recite wherein the hole is covered by foil, therefore the Applicant's argument that the foil constitutes an extra medium through which the heat has to pass and will not facilitate or assist the heat transfer between the meat product and the cooled brine is also applies to Applicant's own invention. Applicant similarly has this same extra medium. Applicant further states in the arguments that it is desired that the foil is heat conductive so that it does not become a heat barrier between the meat and the cooled brine. Christopher teaches that aluminum foil is a heat conductor and facilitates the transfer of heat. By not becoming a heat barrier, the foil would be a heat transfer promoter and thus would not be a barrier between and the cooled brine. Furthermore, as claimed it is unclear as to how the addition of an extra medium would not hinder heat transfer in the instantly claimed invention but would hinder heat transfer in the prior art. Thus, Christopher teaches that using aluminum foil to cover holes within a base tray would have facilitated heat transfer. Freezing by nature also occurs as a result of heat transfer and Applicant's invention also has a medium between the hole and the meat through which the brine must pass. Therefore the broad teachings of Christopher teach to the ordinarily skilled artisan that using aluminum to cover



holes upon which a food product assist in transfer of heat. Mead further supports this argument by teaching the use of aluminum for the purpose of removing heat from the food product for quick freezing of said foodstuff (Column 2, Lines 5-14, and Lines 24-37).

Applicant's arguments that Christopher is silent on using the bottom layer for support has been fully considered but is not persuasive. The Examiner asserts that it would have been obvious to one having ordinary skill in the art that any layer placed beneath the perforated base of Christopher, upon which a force is exerted would have added further support to the pie. The Examiner further asserts that regardless of the size or thickness or strength, any subsequent layer that was added to the base would also provide additional support to the pie. In addition, by using an aluminum layer on the base of Liberman, for the purpose of facilitating the removal of heat from the food product, the aluminum foil layer would have inherently have supported the meat regardless of whether this was the intended result of the aluminum foil layer.

Regarding the combination of Liberman and Morrison and Mead Applicant has applied the same argument as discussed above. For the reasons discussed above, the combination of Liberman and Morrison and Mead would have provided the broad teachings of using aluminum for the purpose of drawing heat away from the meat and thus further facilitating the freezing process.

### ***Conclusion***

Art Unit: 1761

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Viren Thakur  
Examiner  
Art Unit: 1761



**KEITH HENDRICKS**  
PRIMARY EXAMINER